*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO: 18110 OF 1998

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% 12.06.2007

Subedar Kashmira Singh

….. Petitioner

Vs.

$ The Chief of Army Staff, Army Head Quarter, New Delhi and others.

….Respondents.

! Counsel for the Petitioner: Sri M. Ravindranath Reddy,

^ Counsel for the Respondents: Sri M. Ratna Reddy, SC for Central Government.

< Gist:

>Head Note

? Citations:

[1] AIR 1990 SC 1661
2 2006(2) SCC 652
3 (2001)2 SCC 549
4 2006(2) ALD 1 (FB)
5 (1999) 4 SCC 450
6 (1967) 2 SCR 286)
7 (1998) 8 SCC 685
8 (1992) 2 SCC 598
9 (1972) 3 SCC 432
10 (2006) 4 SCC 322
11 1994(1) SCC 44
12 2002(2) SCC 475

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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 18110 OF 1998

ORDER:

This is a tale of intrigue one rarely associates with the Armed Forces. But for this Court's intervention, the illustrious career, spanning two decades and a half, of an Army Officer would have been derailed by the machinations of another. That the officer should be forced to repeatedly knock the portals of the High Court, for the honour and recognition which he richly deserves, and for the monetary benefits which he is entitled as of right, is, indeed, a matter of regret.

The petitioner, while holding the post of Senior Junior Commissioned Officer (SJCO) of the 6th Battery in the II Training Regiment at Hyderabad, was also officiating as a Subedar Major for a period of five months before Subedar Major Waman Akde took charge of the said post on 21.1.1987. The petitioner was transferred to Allahabad on 16.2.1987 and was required to report thereat on or before 28.4.1987. Subedar Major Waman Akde, after assuming office, took a hostile attitude against the petitioner and on 03.03.1987, while proceeding on leave, handed over charge, of

the post of Subedar Major, to a person junior to the petitioner, though the petitioner was the senior most in the regiment. Alleging that he was illegally using an electric heater, the petitioner's house was raided during his absence and the quarters allotted to him was directed to be vacated. Only on his representation, was the quarters subsequently restored to him.

While matters stood thus, Subedar Major Waman Akde lodged a complaint to the Commanding Officer alleging that the petitioner was responsible for burning of certain kits and personal items belonging to the new recruits of the 6th Battery of II Training Regiment, Artillery Centre, Hyderabad at 6.30 am on 2.4.1987. The Commanding Officer directed Sri D.P. Chakraborty, the Battery Commander, to investigate into the matter and submit a report. Sri D.P. Chakraborty, after investigation, reported that there was no truth in the complaint despite which the Commanding Officer ordered a Court of Inquiry under Rule 177 of the Army Rules. The Court of Enquiry was conducted by Major V.M. Wadhawan. On the basis of the report of Major V.M. Wadhawan, the Commanding Officer directed Sri D.P. Chakraborty, the Battery Commander to march the petitioner under Rule 22 of the Army Rules. The petitioner requested for the option of trial by General Court Martial, (herein after referred to as G.C.M.), and submitted the names of the witnesses to be secured. In the meanwhile the Departmental Promotion Board, on 4.8.1987, approved the petitioner's name for promotion to the rank of Subedar Major. The petitioner was, however, denied promotion on the ground that disciplinary proceedings were pending against him. Questioning

the action of the respondents, in refusing to promote him to the post of Subedar Major, the petitioner filed W.P.3777 of 1988. On 4.8.1988, a charge sheet was issued to the petitioner. On 20.6.1988 the Promotion Board again approved his name for promotion to the post of Subedar Major, despite which he was not promoted in view of the pendency of disciplinary proceedings. On 2.8.1988, the G.C.M. was convened and, based on the objections raised by the petitioner at the threshold itself, the G.C.M. was dissolved. On 7.11.1988, the same Commanding Officer again ordered a de-novo enquiry and directed the petitioner to submit his list of defence witnesses. On 9.3.1988 the petitioner filed W.P. No. 18200 of 1988 questioning the action of the Commanding Officer in ordering a de-novo enquiry. On 14.6.1989 the Army Promotion Board again approved the name of the petitioner for promotion to the post of Subedar Major. The petitioner was, however, not promoted in view of the pendency of disciplinary proceedings. W.P. No. 3777 of 1988 and W.P. No. 18200 of 1988 were dismissed by order dated 21.10.1989. On 31.10.1989, the petitioner was retired from service. However, on the same day, he was placed under close arrest and the summary of evidence was recorded. On 28.3.1990 the G.C.M. was convened and a similar objection, as was raised earlier, was raised by the petitioner. Eventually the G.C.M. was closed on 31.03.1990 and it recorded its findings holding the petitioner guilty of the charge. The petitioner was imposed the sentence of reduction in seniority by one year in the rank of Subedar and was administered a severe reprimand. The General Officer Commanding In Chief, Headquarters, Southern Command, Pune, in his order dated 16.08.1990,

confirmed the sentence.

Aggrieved thereby the petitioner filed W.P. No. 4519 of 1991 to quash the order of the 3rd respondent dated 16.8.1990 confirming the findings and punishment imposed by the G.C.M. In its order dated 18.03.1997, this Court noted that the petitioner had joined the Army as a Sepoy in 1961, had served honourably without any blemish in almost every place viz., NEFA, West Bengal, Punjab, Jammu and Kashmir, Assam and Sikkim, had participated in major operations like 'Ablaze', 'Riddle', 'Cactus' and 'Savage', that he was awarded nine medals including the "Paschim Star", the "Samara Seva Star", the "Himalaya Seva Star" and the "NEFA Star", that he had got five promotions during his 25 years of service and, even when disciplinary proceedings were pending against him, the Army Promotion Board had thrice recommended his name for promotion to the post of Subedar Major. This Court also noted that the incident, alleged to have taken place on 2.4.1987, was nearly ten years prior to the order being passed by this Court, that the petitioner had already undergone processorial torture and irreversible prejudice, that he was deprived of his personal liberty even after his retirement, that his track service record, before the alleged misconduct, was unblemished and that it had come out in the evidence of the witnesses for the prosecution that the petitioner was a disciplined and strict officer. This Court observed that when the petitioner inspected the barracks on 2.4.1987, after seeing the disorderly kit lay-out, he being a disciplined officer may have expressed his displeasure asking the sentry on duty to throw out the scattered articles, that the earlier

allegation of destroying the articles was given up in the charge sheet dated 9.3.1990 and the mere allegation that the petitioner had shouted at the sentry on duty to throw out, and destroy, the articles in the context of an understandable righteous displeasure, without the further allegation of the sentry having translated the verbal direction into an act, did not persuade this court to reserve liberty to the respondents to hold a de-novo enquiry. This Court further held that a careful peep, into the evidence of the prosecution witnesses, indicated the unusual part played by Subedar Major Waman Akde in launching prosecution against the petitioner and that even P.Ws.1 to 3 had deposed that it was Subedar Maj Waman Akde who had called them on 3.4.1987 and had made enquiries about the incident. This Court noted the deposition of P.W.4 that, on 3.4.1987, Subedar Maj Waman Akde had called him to his office and had asked him to state that the items collected from the barracks had been burnt, that he had refused to oblige Sub.Maj Waman Akde and that D.W.2, Lt.Col. (T.S) D.P. Chakraborthy, who was the officer superior to the petitioner at the relevant time, had stated in his evidence that, before the alleged incident, the petitioner had reported to him twice that Sub.Maj Waman Akde was trying to implicate him in a false case. This Court also noted that, though Sub.Maj Waman Akde was not the petitioner's superior officer in the same Battery at the relevant time, the extraordinary and unusual interest and concern shown by him to call P.Ws.1 to 4 and indicating to them, in the context of the earlier reports made by the petitioner to Lt Col. D.P. Chakraborthy, *prima facie* indicated that the relationship between the petitioner and Sub.Maj. Waman Akde was strained. This Court

observed that the allegations made by the petitioner, that the proceedings came to be initiated at the behest of Sub.Maj. Waman Akde to wreak vengeance for certain personal reasons set out in the affidavit, seemed to be correct. This Court also noted that, despite Lt. Col. D.P. Chakraborthy reporting that there was no truth in the complaint, the Commanding Officer had ordered a Court of Enquiry culminating in the constitution of the G.C.M and, while the G.C.M. in its earlier proceedings dated 28.7.1988 had upheld the objections raised by the petitioner and had dissolved the G.C.M, the petitioner was again charge sheeted culminating in passing of the impugned order and the sentence. This Court noted that there was a consistent and determined effort on the part of the Commanding Officer not to give up but to proceed against the petitioner, even after his retirement, perhaps to appease Sub.Maj.Waman Akde. This Court held that interest of justice, and fairness in action, warranted giving a quietus to the decade old controversy and that subjecting the petitioner to one more enquiry on a truncated charge would not serve any purpose. This court quashed the order of the 3rd respondent dated 16.08.1990 and held that, since the petitioner had succeeded in the enquiry by virtue of the order of the Court, he was entitled to be promoted notionally to higher posts and to the pecuniary and other benefits flowing from such notional promotion or promotions.

Aggrieved by the order of the learned Single Judge, in W.P. No. 4519 of 1991 dated 18.3.1997, Writ Appeal No.719 of 1997 was filed and, by order dated 23.7.1997, the Division Bench dismissed the Writ Appeal modifying the order of the learned Single Judge.

Since the order of this Court was not implemented, a legal notice dated 3.2.1998 was issued and consequently the Commandant Artillery Records, Nasik, issued proceedings dated 20.2.1998 granting pensionary benefits to the petitioner in the post of Subedar Major.

The petitioner filed this writ petition claiming several reliefs. He also filed C.C. No. 427 of 1998. While several reliefs are sought for in this writ petition, Sri M. Ravindranath Reddy, learned Counsel for the petitioner, would confine his submissions to grant of relief of payment of salary to the petitioner, as honorary lieutenant from 15.8.1991 to 25.1.1992, as honorary captain for the period from 26.1.1992 to 29.2.1992 and for pensionary benefits in the rank of honorary captain. The affidavits filed, from time to time, both by the petitioner and the respondents have been examined and taken note of. The elaborate oral submissions of Sri M. Ravindranath Reddy, learned counsel for the petitioner and Sri M. Ratna Reddy, learned Central Government Standing Counsel and their written submissions have been taken into consideration.

Sri M. Ravindranath Reddy, learned counsel for the petitioner, would submit that if the petitioner was, in the normal course, promoted as a Subedar Major, he would have been entitled, under Regulation 163, to remain in service till 01.01.1992. Learned counsel would submit that though the petitioner's case was considered and approved for promotion to the post of Subedar Major, by the Promotion Board, on three different occasions on 6.5.1987, 22.6.1988 and 14.6.1989, he was not promoted on account of the pendency of disciplinary proceedings initiated against him in the month of April, 1987. Learned counsel would

submit that Army Order 20 of 1981 disentitled an employee from being promoted to a higher rank when disciplinary proceedings were pending against him. Learned counsel would submit that as a consequence of the judgment in W.P. No. 4519 of 1991, as affirmed in W.A. No. 719 of 1997, and the earlier order of this Court in W.P. No. 3777 of 1988, the petitioner was entitled to all consequential benefits which were denied to him merely on account of pendency of disciplinary proceedings. Learned counsel would submit that, even otherwise, since this Court in W.P. No. 4519 of 1991 had held that the very initiation of disciplinary proceedings was illegal, and had not given liberty to the respondents to initiate further enquiry, the consequence thereof was that the petitioner was entitled to all consequential reliefs and, inasmuch as the petitioner was denied the consequential relief of being considered for conferment of the honourary rank of lieutenant/captain, and for payment of salary and fixation of pension in the said ranks, failure on the part of the respondents to confer on him the said benefits necessitated his having to invoke the jurisdiction of this Court by way of the present writ petition. Learned counsel would submit that, vide proceedings dated 20.02.1998, the respondents had held that the petitioner was entitled only to fixation of his salary in the rank of subedar major, and it was only in view of such an order did the necessity of filing the present writ petition arise and that the consequence of the earlier orders of this Court, in W.P. No. 3777 of 1988 and W.P. No. 4519 of 1991, was that the petitioner was entitled to conferment of the honorary rank of lieutenant and captain and for payment of

salary in the said posts from the date of conferment and for fixation of pension and other pensionary benefits accordingly.

Learned counsel would submit that the contention of the respondents, that the case of the petitioner was considered for conferment of the honorary rank of lieutenant in the year 1989, was without any basis in as much as Army Order 20 of 1981 precluded the respondents from conferring promotion on an employee during the pendency of disciplinary proceedings. Learned counsel would place reliance on Paragraph 29 of the guide- lines dated 20.8.1982 to submit that, even if the name of the petitioner had been forwarded, he could not have been considered for conferment of the honourary ranks in view of the pendency of disciplinary proceedings instituted against him. Learned counsel would also rely on the 'Form of recommendation', prescribed in Paragraph 24(a) of the 1982 Regulations, which requires the immediate Commanding Officer to certify whether or not the incumbent, whose case has been recommended for conferment of honourary rank, is involved in a disciplinary case. Learned counsel would also place reliance on the letter of the 5th respondent dated 28.6.1988, more particularly Paragraph 3(d) thereof, to submit that the said certificate is required to be accompanied by other documents and that, in compliance thereof, a certificate dated 30.7.1988 was, in fact, sent. Learned counsel would submit that, since marks are required to be awarded for various aspects for determining whether the incumbent should be considered for conferment of the honourary ranks of lieutenant/captain, pendency of disciplinary proceedings would affect the marks to be awarded

and it is with a view to avoid this contingency that the rules provide that a person involved in disciplinary proceedings should not be recommended for conferment of these honourary ranks. Learned counsel would also refer to the counter affidavit filed in W.P. No. 3777 of 1988 wherein the respondents had stated that, if the petitioner was promoted during the pendency of disciplinary proceedings, it would affect discipline in military service. Learned counsel would submit that if such was the case for promotion to the post of Subedar Major, the respondents could not have considered the petitioner's case for conferment of the honourary rank of lieutenant and captain. Learned counsel would also refer to paragraphs 3 of the 1982 Regulations to submit that, the conditions prescribed therein required that, in none of the Annual Confidential Reports, (hereinafter referred to as ACRs), for the previous five years, the grading should be 'below average', and that, in case an employee had an adverse ACR in any one of the five years, the question of his case being recommended for conferment of honourary rank did not arise. Learned counsel would also refer to Clause 3(d), of the 1982 Regulations, to submit that, since the petitioner had an adverse entry in his ACR for the year 1987, which was within two years of initiation of the recommendation for conferment of the honourary rank of lieutenant in the year 1989, the petitioner was ineligible for being considered for conferment of the honorary rank. Learned counsel would submit that the adverse remark in the ACR for the year 1987 was made in the year 1988, as disciplinary proceedings had been initiated against the petitioner in April, 1987 and that, on a statutory complaint being filed by the petitioner against the adverse remark, the same was set aside by

the Chief of Army Staff whose order was communicated to the petitioner vide proceedings dated 14.2.1990. Learned counsel would submit that, since the adverse remarks were set aside only in the year 1990 and were pending in the year 1989, the question of the petitioner's case being considered for conferment of honorary rank, in accordance with the rules, in the year 1989 did not arise. Learned counsel would also point out that, in view of the pendency of disciplinary proceedings, no ACRs were prepared in the year 1988 and that the petitioner had only four ACRs by the year 1989 as against the required five ACRs. Learned counsel would also refer to the correspondence in this regard to submit that there was lack of clarity among the respondents whether or not the petitioner's case should be considered for conferment of these honorary ranks in view of the pendency of disciplinary proceedings, that all the aforesaid facts would establish that the petitioner's case could neither have been nor was it considered for conferment of the honorary rank of lieutenant in the year 1989 and that, in any event, even if it was presumed that his case was considered, since such consideration was contrary to the 1982 Regulations, it must be deemed that there was no such consideration.

Learned counsel would submit that, in view of the Paragraph 3 of the guidelines dated 20.8.1982, the petitioner was entitled to be considered for conferment of the honourary ranks of lieutenant and captain only in his last year of service in 1991, and not in the year 1989, and as such the alleged consideration in the year 1989 was of no consequence. Learned counsel submits that

considering the petitioner's case in the year 1991 would also have entitled him for more marks and the contention of the respondents, that his case was considered in 1989 and he was not conferred the honourary rank of lieutenant, in view of his low marks, necessitated rejection.

Learned counsel would submit that the respondents, in their first counter filed in the present writ petition on 17.8.1998, had contended that the petitioner was low in merit and that his name was not recommended. Thereafter, the petitioner had filed letter dated 25.11.1998, under Rule 15 of the Writ Rules, 1977, and had also filed his reply affidavit in December, 1988 denying the aforesaid averments in the counter affidavit of the respondents. In their additional counter affidavits dated 4.3.1999 and 8.7.2000 the respondents, placing reliance on the guide-lines for destruction of records, had contended that the records had already been destroyed. Learned counsel would contend that if, indeed, the records had been destroyed even prior to the present writ petition being filed there was no basis for the respondents to come to the conclusion that the petitioner's case was not recommended for conferment of the honorary rank as he was low in merit. Learned counsel would contend that the submission made later across the bar, that the very fact that the petitioner was not recommended for conferment of the honorary rank of lieutenant would necessitate an inference being drawn that he was low in merit, did not merit acceptance. Learned counsel would contend that the entire effort of the respondents is to hoodwink the Court and defeat the rights of the petitioner by hook or crook. Learned counsel would also dispute the respondents' contention that the records were

destroyed as per the prescribed Regulations. He places reliance on para 592 to 595 of the Army Regulations, 1987 to submit that an elaborate procedure has been prescribed therein for destruction of the records, that a Board consisting of three members is required to be constituted, including an officer of the unit whose records are sought to be destroyed, that the Board is first required to withdraw for preservation the documents which are likely to be of some value, that a recommendation has to be made, thereafter, to the Brigadier/Sub-Area Commander for further processing of the documents to be destroyed and that final orders are issued thereafter for disposal of the said documents ensuring that no documents, which may be of interest from various points of view, are destroyed. Learned counsel would also place reliance on sub-clauses (1) to (5) of the Note given under Para 592 which requires certain records to be retained permanently, to Clauses (7) and (16) which require retention of certain records for a period of 10 years and to Clause (15) whereunder certain records are to be retained for 5 years. According to the learned Counsel there is not even a gap of one year between various events in the present case and as such destruction of records by the respondents was in violation of Para 592 of the Regulations. Learned counsel would submit that the very fact that the petitioner had been thrice recommended for promotion to the post of Subedar Major, would show that he had an exemplary service record and that he was earlier denied promotion only on account of pendency of disciplinary proceedings. Learned counsel would submit that, even assuming that the petitioner's case was considered for conferment of honorary rank in the year

1989, the said consideration, being contrary to the rules, was void, liable to be ignored and since the disciplinary proceedings was quashed by this Court, the petitioner was entitled for all consequential benefits which included his case being considered for conferment of the honourary rank of lieutenant and captain. According to the learned counsel since promotion to the post of Subedar Major is also required to be considered by the Promotion Board, there is no difference between promotion to higher posts, such as the post of Subedar Major, and conferment of honorary rank of lieutenant and captain, more so, since conferment of honorary rank is by way of awarding marks under the 1982 Regulations.

Learned counsel would submit that, as a consequence of the orders of this Court, all benefits which accrued to the petitioner, during the period from when disciplinary proceedings were initiated in April, 1987 till 23.07.1997 when W.A. No. 719 of 1997 was dismissed, and which were denied to him on account of pendency of disciplinary proceedings and the punishment imposed, must be restituted/restored and, since it was only in their proceedings dated 20.2.1998 that the respondents had refused to extend several of the reliefs sought for, the cause action arose only on 20.02.1998 and not prior thereto. Learned counsel would submit that, within two months of the cause of action having arisen on 20.2.1998, the petitioner had filed C.C. No. 427 of 1998 on 6.4.1998, that the present writ petition was filed on 29.6.1998 within five months from the date on which the cause of action arose, and as such the petitioner was not guilty of laches. Learned counsel would submit that, since no employee is entitled to be

considered either for promotion or for conferment of honorary ranks during the pendency of disciplinary proceedings, or after imposition of punishment, the petitioner could not have sought for the relief of conferment of the honorary rank of lieutenant or captain prior to the disposal of W.P. No. 4519 of 1991 on 18.3.1997. Learned counsel would submit that, even otherwise, the respondents should not be permitted to take advantage of their own wrong in denying the petitioner the benefits which he was entitled to.

Learned counsel would submit that the petitioner underwent the humiliation of being arrested on 31.10.1989, detained till the conclusion of the G.C.M. on 3.5.1990 for a period of about six months, and having his family thrown out of the quarters at the instance of Sub. Major.Waman Akde, that he was not even released emoluments or pension during the period of his arrest, that two other persons, who had allegedly carried out his alleged illegal command, were exonerated and all benefits were extended to them and that the petitioner was made to suffer humiliation for a period of three years from 1987 to 1989, refused annual leave, educational allowances etc., that part of the monetary benefits, payable as a consequence of his notional promotion to the post of Subedar Major from 1.1.1988, were given to him only after he filed C.C. No. 427 of 1998 and the present writ petition, that too at the instance of this court, and that the petitioner has an exemplary service record with 9 medals and no adverse remarks. Learned counsel would submit that the petitioner is entitled for all benefits including reasonable interest on the amounts already paid to him

during the pendency of the writ petition from the date they fell due till the date of actual payment.

Sri M. Ratna Reddy, learned Central Government Standing Counsel, would refer to the order of this Court in W.A. No. 719 of 1997 dated 23.6.1997, in modification of the order passed in W.P. No. 4519 of 1999 dated 18.3.1997, to contend that the order of this Court was specifically confined to the recommendations made by the Promotion Board to the post of Subedar Major. Learned Standing Counsel would submit that while promotion, to every Junior Commissioned Officer's (JCO) post of Subedar/Subedar Major, was routine, and a candidate who fulfilled the promotion criteria was entitled to be promoted to the said post in the order of his seniority, grant of honorary commission was not a routine promotion and was available only to persons holding the posts of Subedar/Subedar Major on the yardstick of certain criteria and procedures laid down for selection. Learned Standing Counsel would submit that, as per Regulation 177 of the 1987 Army Regulations, only 12 out of 1000 Subedars/Subedar Majors were considered for conferment of the honorary rank of lieutenant and one out of four honorary lieutenants were conferred the honorary rank of captain. Learned Standing counsel would submit that the claim of the petitioner was considered for honorary commission, both on the occasion of Republic Day and Independence Day in the year 1989, as per the procedure laid down in Army Head Quarters letter dated 20.8.1982 and as per the prescribed yardsticks. Learned Standing Counsel would also refer to Para 592 to 596 of the 1987 Regulations to submit that the time limit for retention of documents and records of general correspondence, which are

required to be destroyed by burning them, was 3 years and, in accordance with the said rules, the records of routine correspondence were burnt and destroyed by the Southern Command Headquarters. Learned Standing Counsel would submit that mere pendency of the departmental enquiry had no bearing for being considered for grant of honorary commission and it was only those specific cases, mentioned in Page 2 of the Army Headquarters letter dated 20.8.1982, which were debarred from consideration. Learned Standing Counsel would submit that communication of an adverse report in red ink is not a red ink entry and that red ink entries are defined under Para 387(b) of the 1987 Army Regulations and in Para 1715 of Section 27 of the Artillery Records Instructions, 1981. Learned Standing Counsel would submit that, since the petitioner had already been considered twice in the year 1989, his name was not considered again for honorary commission, on his notional promotion as Subedar Major, since as per the rules mentioned in Para 3 of the Army Letter dated 20.8.1982, a JCO is given only two chances in both the ranks i.e., in the rank of Subedar and Subedar Major and that the present policy of two chances in each rank, of Subedar and Subedar Major, for grant of honorary commission, came into force with effect from 29.6.1992 and, since the petitioner retired as a Subedar Major prior thereto, the question of his being given another chance for being considered for conferment of the honorary rank of lieutenant, as per the Army Headquarter letter dated 29.6.1992, did not arise. Learned Standing Counsel would submit that W.P. No. 18110 of 1998 was filed on 29.6.1998 nine

years after the petitioner's retirement from service. According to the learned Standing Counsel the petitioner was fully aware that he was not conferred the honorary commission, on both occasions of Republic Day and Independence Day in the year 1989, and, if he had any grievance in this regard, he ought to have sought redressal soon thereafter and that he had instead chosen to keep quiet for nine long years and had not even raised this plea in W.P.4519 of 1991 filed before this Court. Learned Standing Counsel would contend that, as conferment of honourary rank is not a promotion, it cannot be claimed as a matter of right and, as the relief of being conferred the honourary rank of lieutenant/captain, was not sought for by the petitioner, in any of the writ petitions filed by him earlier, the inordinate delay and laches on his part disentitled him to the relief sought for. Learned Standing Counsel would place reliance on the judgment of the Supreme Court in **Paluru Ramakrishna Vs. Union of India**[1] to submit that it is well settled that persons are not entitled to any pay and allowances during the period for which they did not perform the duties of the higher post although, after due consideration, they are held to be entitled for promotion to the said higher post.

If there is abnormal delay in filing a writ petition, and there is no plausible explanation, Courts may decline to entertain the petition on the ground of laches. (**SDO, Telegraph, Bijnor Vs. Central Government Industrial Tribunal-cum-Labour Court, Kanpur**[2]). In exercise of its writ jurisdiction, the High Court should keep in mind the facts and circumstances of each case and ascertain whether or not there has been laches on the part of the

parties in seeking the relief. (**U.P. Pollution Control Board Vs. Kanoria Industrial Ltd**[3]). While in all cases relief cannot be denied, to the aggrieved in the writ petition, merely on the ground of latches, if the delay and latches has the effect of seriously affecting the fundamental rights of a third party, relief can be refused for valid reasons. Grant of relief can also be denied if the long delay is likely to result in throwing public administration out of gear. (**P.V.S.V. Prasada Rao Vs. Andhra University**[4]).

Delay, by itself, may not defeat the claim for relief unless the position of the respondents has been so altered as to be rendered incapable of retraction on account of lapse of time or inaction of the other party. This aspect is dependent upon an examination of the facts of each case. (**Hindustan Petroleum Corporation Ltd Vs. Dolly Das**[5]). The rule which states that stale and belated claims shall not be entertained cannot be exalted into a rule of limitation. (**Chandra Bhushan Vs. Dy. Director, Consolidation, U.P.,**[6]) . There is no time-limit prescribed for filing a writ petition. All that the court has to see is whether laches on the part of the petitioner are such as to disentitle him to the relief claimed. Delay in filing a Writ Petition cannot be examined as if it is a case under Section 5 of the Limitation Act. (**State of U.P. Vs. Raj Bahadur Singh**[7]).

The rule, which says that the Court may not enquire into belated and stale claims, is not a rule of law but a rule of practice based on sound and proper exercise of discretion. Each case must

depend upon its own facts. It will all depend on what the breach of the fundamental right was, the remedies claimed are and how the delay arose. The principle on which the relief to the party, on the ground of laches or delay, is denied is that the rights which have accrued to others, by reason of the delay in filing the petition, should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence on his part. The test is not to the physical running of time. Where the circumstances justifying the conduct exist the illegality which is manifest cannot be sustained on the sole ground of laches. (**Dehri Rohtas Light Rly. Co. Ltd. Vs. District Board, Bhojpur**[8]). After admission of the writ petition, and hearing of arguments, the rule that delay may defeat the rights of a party is relaxed and need not be applied if the petitioner's case is "positively good". (**P.B. Roy Vs. Union of India**[9]).

In **Karnataka Power Corpn. Ltd. Vs. K. Thangappan**[10], the Supreme Court observed:-

".....**Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercises its discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court** as pointed out in *Durga Prashad* v. *Chief Controller of Imports and Exports* (AIR 1970 SC 769). **Of course the discretion has to be exercised judicially and**

reasonably.

What was stated in this regard by Sir Barnes Peacock in *Lindsay Petroleum Co.* v. *Prosper Armstrong Hurd*(1874) 5 PC 221) was approved by this Court in *Moon Mills Ltd.* v. *M.R. Meher*(AIR 1967 SC 1450) and *Maharashtra SRTC* v. *Shri Balwant Regular Motor Service*(AIR 1969 SC 329) Sir Barnes had stated:

> "Now, the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy either because the party has, by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. **But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitation, the validity of that defence must be tried upon principles substantially equitable. Two circumstances always important in such cases are, the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as it relates to the remedy**……..." (emphasis supplied)

The question of delay in invoking the writ jurisdiction of the High Court must also be considered along with the inaction, on the part of the authorities, in performing their duties. Can the respondents be heard to say that their failure, to perform their duty within a reasonable time, is of no consequence as the person, who has been wronged or deprived of his right, has not invoked the jurisdiction of the High Court for a suitable writ or direction to grant the relief considered appropriate in the circumstances? Where the authorities are enjoined to perform their duties they are answerable to the Court why such duties have not been performed by them, which has caused injury to the person who has invoked its jurisdiction, albeit belatedly. (**Ram Chand Vs. Union of India**[11]).

It must also not be lost sight of that, in exercise of its writ

jurisdiction, the High court has the power to mould the relief having regard to the facts of the case and interest of justice. (**Food Corporation of India Vs. S.N. Nagarkar**[12]). Where a manifestly illegal action is under challenge, though belatedly, this Court, while exercising its discretion to entertain the writ petition, would appropriately mould the relief to be granted. Laches by itself is, therefore, not a ground to disentitle relief to the petitioner herein, and, even if it is held that he has approached this Court belatedly, the relief to which he is entitled to can be appropriately moulded.

It is in this context that the facts of the present case must be examined to ascertain, firstly, whether the delay in seeking the relief remains unexplained and, if so, whether the petitioner is disentitled to the relief sought for on the ground of laches.

As noted above, the petitioner had earlier filed W.P. No. 3777 of 1988 and 18200 of 1988. The relief sought for in W.P. No. 3777 of 1988 was for a direction to declare the action of the respondents in not promoting him to the post of Subedar Major, the disciplinary proceedings initiated against him, and the adverse remarks entered in his ACR for the year 1987, as arbitrary and illegal. The relief sought for in W.P. No. 18200 of 1988 was to declare the action of the respondents in proposing to hold a *de nova* enquiry, vide proceedings dated 15.07.1988, and in appointing an enquiry officer, as arbitrary and illegal.

This Court dismissed both the writ petitions, by order dated 20.10.1989, holding that Army Order 20 of 1981 permitted withholding of promotions whenever disciplinary cases were

pending against officers. This Court observed that, in the event of the further enquiry going in favour of the petitioner, either wholly or in part, it would be for the authorities to consider the case of the petitioner for higher promotion or higher emoluments notwithstanding the petitioner's retirement and that this should be done in accordance with the provisions of Army Order 20 of 1981 and other orders. Both W.P. No. 3777 of 1988 and W.P. No. 18200 of 1988 were dismissed subject to the respondents giving the petitioner the benefit of seniority or higher emoluments, notwithstanding his retirement, in the event of the subsequent enquiry going in the petitioner's favour. It is necessary to note that both W.P. Nos. 3777 of 1988 and 18200 of 1988 were filed prior to conferment of the honourary rank of lieutenant, to those Junior commissioned officers whose names were forwarded along with the petitioner, in the Republic Day and Independence Day celebrations for the year 1989 and as such the relief of conferment of honourary rank could not have been sought for in the aforesaid two writ petitions.

Could the petitioner have sought for such a relief in W.P. No. 4519 of 1991? The relief sought for in W.P. No. 4519 of 1991 was to quash the order of the General Officer Commanding-In-Chief, Southern Command, dated 16.08.1990, confirming the findings of the General Court Martial. As noted above on 03.05.1990 the G.C.M, after recording its finding that the petitioner was guilty of the charges, imposed on him the sentence of reduction by one year in the substantive rank of Subedar and administered on him a severe reprimand. This sentence, passed by the G.C.M, was confirmed by the General Officer, Commanding

in Chief, Southern Command Headquarters in his proceedings dated 16.08.1990. As long as this order of punishment remained in force the petitioner could not have sought for the relief of being conferred the honourary rank of lieutenant/captain as these honourary ranks are conferred on Subedars/Subedar Majors, whose service record is exemplary. In this context, it is necessary to note the relief granted by this Court in its order in W.P. No. 4519 of 1991 dated 18.03.1997.

> ".....In the result I make the following
>
> Order
>
> i. W.P. No. 4519 of 1991 is allowed and the impugned proceedings and the impugned proceedings and the order of the third respondent dated 16.08.1990 are quashed;
>
> ii. A writ of mandamus shall issue to the respondents to grant promotion/promotions notionally to the petitioner in the light of the recommendations made by the Promotion Board with effect from the date on which such promotion/promotions fell due with all consequential pecuniary and other benefits flowing from such promotion. This direction should be carried out within a period of two months from today.
>
> iii. The petitioner is entitled to the costs quantified at Rs.15,000/-. The respondents shall pay the costs to the petitioner within a period of two weeks from today.

It is only after the punishment imposed on the petitioner was quashed by this Court, in its order in W.P. No. 4519 of 1991 dated 18.03.1997, was he entitled to seek the relief of being considered for conferment of the honourary rank of lieutenant/captain.

Since the respondent would contend that the order, in W.P.4519 of 1991 dated 18.3.1997, has been modified in appeal, it is necessary to note the order of the Division bench in W.A. No. 719 of 1997 dated 23.07.1997. The operative part of the said order reads thus:

"……We feel, however, that the direction as above needs modification to the limited extent that instead of the direction to promote notionally otherwise, the direction shall be that the concerned authorities shall proceed on the basis of the recommendations of the Promotion Board to consider the case of the petitioner-respondent for promotion and fix accordingly notionally his position above his next junior in service and extend accordingly all consequential benefits including difference in wages, if any.

With the modification as above in the impugned order, the appeal is dismissed."

The Division bench, in dismissing the Writ Appeal, has, in effect, confirmed the orders passed in W.P. No. 4519 of 1991 dated 18.03.1997 except to the limited extent that instead of straight away promoting the petitioner as Subedar Major, the respondents were directed to proceed on the basis of the recommendations of the Promotion Board and consider his case for promotion as Subedar-Major.

It is also necessary to note that it is only on 21.01.1998 that the petitioner was promoted as a Subedar Major with effect from 01.01.1988 and, vide proceedings dated 20.02.1998, he was denied several of the other benefits which he had sought for. Prior to 21.01.1998, when he was notionally promoted as Subedar Major with effect from 01.01.1988, and since the matter was then pending consideration by the respondents, there was no necessity for the petitioner to invoke the jurisdiction of this Court. It is only on his becoming aware, consequent to the proceedings dated 20.02.1998, that he was being denied the benefit of conferment of honourary rank of lieutenant/captain, could he have approached this Court seeking such a relief. The petitioner filed C.C. No. 427 of 1988 on 31.03.1988 and the present writ petition on 29.06.1988. Since the petitioner has invoked this Court's jurisdiction within six months of

his being given promotion as a Subedar Major on 21.01.1998, and his being denied the other benefits, the petitioner can neither be held guilty of inordinate delay and laches nor can it be said that the delay is unexplained. In any event, since no third party rights are affected and it is always open to this Court to appropriately mould the relief, I see no reason to deny the petitioner the relief sought for on the ground of delay and laches.

Paras 177, 178, 179 and 184 of the Defence Service Regulations, (Regulations for the Army, Volume-I Revised Edition, 1987), relate to conferment of honourary ranks.

HONORARY RANKS AND AsDC

177. Honorary Officers – (a) JCOs who have rendered specially distinguished service, and who are serving in the Regular Army may be granted commissions of honorary officers in the rank of Captain or Lieutenant.

(b)Nomination for the grant of commissions as honorary officers and for promotion to Captain of JCOs holding the commission of honorary officers with the rank of Lieutenant will be made by the Chief of the Army Staff.

(c) The ratio of honorary commissions for each Republic Day and Independence Day will be

(i) Hony Capts – 1 for every 4 Hony Lieuts.

(ii) Hony Liets - 12 for every 1000 JCOs.

178. **Status** – (a) The status of a JCO as such is not affected by the grant to him of the honorary rank of Lieut, or Captain, nor does the commission granting him that rank confer on him any additional powers of command.

(b) Such honorary commissioned officers will take rank according to their Junior Commissioned Officers rank and will accordingly be junior to all officers. No promotion to or in the cadre of JCOs will be made in the place of a JCO granted a commission as honorary officer.

(c) Similarly, the seniority of a Naib Subedar Head Clerk will not be affected by the grant of honorary rank as a Risaldar or Subedar.

179. Honarary Ranks on Retirement – (a) A step of honorary rank on retirement with the title of honorary Risaldar Major, Subedar Major, Risaldar or Subedar may be bestowed on JCOs who are recommended by the Chief of the Army Staff, as specifically deserving of the honour.

(b) In very exceptional cases JCOs who have served with special distinction , and who have attained the rank of Risaldar Major or Subedar Major or have

held the appointment of ADC to the President, a Governor or the Chief of the Army Staff, or GOC-in-Command, or who have been awarded the PVC/VC/MVC or VrC/MC may be granted the honorary rank of Captain or Lieutenant on retirement, if recommended for the honour.

184. Awards-Honorary Commissions And Honorary Ranks-Procedure:-

a. The grant of honourary commissions to JCOs under para 177 a step of honorary rank to JCOs under para 179, the honorary rank of Naib Risaldar, Naib Subedar toDafadars/Havildars under para 180, the honorary rank of Dafadar/Havildar to Naiks under para 181 and the honorary rank of Naik to Sepoys under para 182 will be made twice a year i.e., on the Republic and Independence days.

b. The recommendations for the grant of honorary commissions as officers to JCOs will be submitted on IAFZ-2018. No specific form has been prescribed for submission of recommendations for honorary ranks to OR. In the latter cases only detailed statement of service of the individual with recommendations are required.

Respondents would refer to para 177(c) to submit that for Republic Day, 1989, 617 Junior Commissioned Officers from the Military Corps, including the petitioner, were recommended from out of whom only 98 were conferred the honorary rank of lieutenant. Similarly for Independence Day, 1989, while 652 JCOs from the Military Corps, including the petitioner, were recommended only 102 JCOs, from among them, were conferred the honorary rank of lieutenant.

The procedure prescribed, for selection of Subedars/Subedar Majors, for grant of honorary commission of lieutenant/captain, as detailed by the respondents, is not disputed by the petitioner. This process of selection is in three stages. The first stage involves forwarding the recommendation, of the Officer Commanding of the Unit, to the concerned Records Office in respect of all Subedars/Subedar Majors who are on the active list

along with the duly signed master sheet. On 30.7.1988, the OC Unit at Hyderabad certified that nothing adverse against the petitioner had come to their notice since initiation of his last ACR for the year 1987. The petitioner also signed the master sheet. It is thus evident that the petitioner's name was forwarded by the O.C unit, Hyderabad to the Record Office.

In the second stage, based on the recommendations of the O.C. Unit, the concerned Record Office fills up the recommendation forms and forwards it to the respective Command Headquarters. From the proceedings of the Board of Officers assembled at the Artillery Records Office, Nasik Road, in August, 1988 and 16th January, 1989, for the purpose of checking/scrutinizing the recommendation records for the award of honorary commission/ranks to JCOs on the occasion of Republic Day and Independence Day, 1989 respectively, it is evident that the recommendation rolls of the petitioner were also checked. These checked recommendation rolls were required to be forwarded by the Artillery Records Office to the Southern Command Headquarters at Pune.

In the third stage, the Southern Command Headquarters at Pune consolidates the entire recommendation forms, allots marks as per the prescribed yardstick and forwards the original recommendation forms of eligible JCOs, as recommended by the General Officer Commanding In Chief, Southern Command, to the Army Headquarters at New Delhi. From the affidavit, of Lt. Col. Gaurav Karki, Army Headquarters, New Delhi, dated 10.2.2007, it is clear that the recommendation forms of the petitioner were not

received by the Army Headquarters at New Delhi. Except for the list of recommendation rolls prepared by the Board of Officers, Artillery Records, wherein the petitioner's name also finds place, there is no other evidence on record to show that the petitioner's case was considered by the Southern Command Headquarters at Pune, that he was allotted marks and that his candidature was not recommended to Army Headquarters at New Delhi only because he was found to be low in merit. What is not in dispute, however, is that the petitioner was not included in the list, of recommended JCOs, forwarded by the Southern Command Headquarters, Pune to the Army Headquarters at New Delhi.

The petitioner would emphasis that, under the rules, his case could not have been considered in view of the pendency of disciplinary proceedings instituted against him in April, 1987. He would rely on Army Order 20 of 1981 to contend that pendency of disciplinary proceedings is a bar for promotion to higher posts including conferment of the honoourary rank of lieutenant/captain. Respondents would, on the other hand, submit that Army Order 20 of 1981 relates only to promotions, that conferment of honourary rank of lieutenant/captain, to a JCO in the last year of his service, was not a promotion, and it is only those specific cases, mentioned in para 4 of the instructions in Army Headquarters letter dated 20.08.1982, which are barred from being considered for conferment of honourary ranks.

It is necessary, in this context, to refer to the relevant portions of Army Order 20 of 1981 and the instructions in the Army Headquarters letter dated 20.08.1982. Clauses 1 to 3 of Army Order 20 of 1981 read thus:-

1. Cases have come to notice where JCOs and OR while involved in disciplinary, vigilance or criminal cases were inadvertently promoted or discharged before finalisation of these case.
2. Whereas the above situation is not likely to arise in cases in which the competent authority to promote an individual or sanction his discharge is the Commanding Officer of the individual, such a situation may occur where the promotion/discharge is effected by the Record Office.
3. In order, therefore, to obviate occurrence of cases of this nature, the following procedure is laid down:-

(a) **Before ordering promotion, substantive or acting, the Record Office will obtain clearance from the unit/formation where an individual is serving regarding his non-involvement in any disciplinary, vigilance or criminal case. If an individual is reported to be involved in any of the following cases, a ban on his promotion will be imposed:-**

(i) Disciplinary cases: Where formal cognizance of an offence has been taken

(ii) Vigilance cases: Where a report from the SPE/CBI has established a prima facie case against the individual.

(iii) Criminal cases: Where a person is facing prosecution by Government in a Court of law on a matter involving moral turpitude or lack of integrity.

(b) Units/formations will inform the Record Office of the institution and the result of the disciplinary/vigilance/criminal case against personnel serving under them. The cases of promotion to higher ranks in respect of those who are subsequently acquitted or against whom the case is withdrawn, will be reviewed and they may be recommended for such promotion if considered fit in all respects. They may be given seniority in that rank from a retrospective date without effect on pay and allowances. Where substantive promotion is to be effected from a retrospective date, the individual who has been acquitted or against whom the case has been withdrawn will be so promoted from the due date if he is considered fit in all respects.

(c) Service personnel against whom disciplinary/vigilance cases are pending at the time of their retirement/release/invalidment, will be retired/released/invalided out on the due dates and Army Act Sec 123 invoked to proceed against them till finalization of the case. (emphasis supplied)

Para 4 of the Army Headquarters letter dated 20.08.1982, which are the instructions applicable for the grant of honourary commission/ranks to JCOs/Dafadars /Havildars, stipulates that the following JCOs will not be eligible for consideration for grant of honourary commission:-

"a. JCOs while on extended period of service.

b. JCOs who proceed on premature retirement on any ground without completion of normal tenure of their colour service.

c. JCOs being permanent low medical category due to reasons other than Battle Casualty, attributable to or aggravated by Military Service.

d. JCOs convicted by a Court Martial in any rank for any of the following offences:-

i. In relation to the enemy punishable by death;
ii. In relation to the enemy not punishable by death;
iii. Punishable more severely on active service;
iv. ….
v. Disobedience to superior officers (during active operations only);
vi. Offences involving moral turpitude;
vii. Cowardice;
viii. An act of indecent and unnatural kind;
ix. Gross indiscipline (To be only adjudged at the level of GOC-in-C Command. Record Office will not withhold recommendations).

Under clause 4(d)(ix) JCOs, convicted by a Court Martial for gross indiscipline, are not entitled to be considered for conferment of the honourary rank of lieutenant/captain. Withholding of recommendation on a conviction involving an act of gross indiscipline is, however, required to be adjudged at the level of GOC in 'C' command and the record offices are not entitled to withhold recommendations.

In the case on hand the petitioner was convicted by the G.C.M. on 03.05.1990 and prior thereto the disciplinary proceedings, instituted in April, 1987, were pending. While it is no

doubt true that para 4, of the Army instructions dated 20.08.1982, did not preclude the petitioner's case from being considered for conferment of honourary rank, para 29 of the very same instructions, as amended by order dated 15.09.1986, required cases of JCOs, whose performance had become indifferent or had deteriorated, after submission of recommendation for honourary commission/rank, also to be considered for withdrawal. Para 29, as amended by order dated 15.09.1986, reads thus:-

> "Any cancellation/amendment, immediately on occurrence, as a result of death, promotion, having been declared "unfit" for promotion, involved in disciplinary case will be communicated by signal by the Unit/Record office direct to this Mukhyalaya with a copy to the Kaman Mukhyalaya through which the recommendation forms have been submitted. However, in case of a JCO/Dafadar/Havildar involved in disciplinary case after having been recommended for the grant of honourary commission/rank by the respective GOC-IN-C command, Army commander's approval for withdrawal will be necessary.
>
> "JCOs/Dafadars/Hav, whose performance becomes indifferent or deteriorates after submission of recommendation for Honorary Commission/rank can also be considered for withdrawal. The SRO will be the competent authority to recommend withdrawal in such cases or in the case of units where there is no RO the authority will be vested with immediate formation commander".

(Auth: Army HW (CW-2) letter No. A/62204/AG/CW-2 dated 15 Sep 86).

From the chronology of events submitted by Sri M.Ratna Reddy, learned Central Government Standing Counsel, it is evident that the petitioner was found to be involved in a disciplinary case in April, 1987, that in June 1987 the competent authority had decided to dispose of the case summarily under Army Rule 22(3), that charges were framed against him under Section 55(a) of the Army Act on 04.08.1988, and that, while the proceedings of the G.C.M. ended on 27.8.1988, fresh proceedings were instituted de novo on

7.11.1988. As such when the recommendation forms of JCOs, including the petitioner, were forwarded by the O.C. unit to the Records office, for being considered for conferment of the honorary rank of lieutenant, on Republic Day and Independence Day 1989, disciplinary proceedings were pending against the petitioner and, under para 29 of the instructions in Army Headquarters letter dated 20.8.1982, the fact that the petitioner was found to be involved in a disciplinary case was required to be communicated to the Army Headquarters at New Delhi and to the Southern Command Headquarters at Pune. There is no evidence on record to show that, in accordance with Para 29 of the instructions in Army Headquarters letter dated 20.8.1982, the Southern Command Headquarters at Pune was informed that the petitioner was involved in a disciplinary case or that the Southern Command Headquarters, Pune had considered the question whether the petitioner's performance had deteriorated, or had become indifferent, after submission of the recommendation form necessitating its withdrawal.

While the letter of the OC Unit, Hyderabad dated 30.7.1988 does indicate that nothing adverse was noticed in case of the petitioner, after initiation of his last ACR for the year 1987, and the proceedings of the Artillery Records office would show that the petitioner's name was included in the list of recommendation rolls for conferment of honorary rank of lieutenant, both for the Republic day and the Independence day parade for the year 1989, it was the Southern Command Headquarters at Pune which was required to decide whether or not the petitioner's case should be considered for being recommended for grant of honorary commission. Since

the documents, relating to grant of honorary commission to JCOs. during Republic Day and Independence Day, 1989, were destroyed even prior to the present writ petition being filed, there is no evidence on record, either in support of the petitioner's contention, that his case was not considered at all by the Southern Command Headquarters in view of the disciplinary proceedings pending against him, or in support of the respondents' contention that, while the petitioner's case was considered, he was not recommended as he was found low in merit.

The eligibility criteria for grant of honorary commission to JCOs is stipulated in Para 3 of the Army Headquarter letter dated 20.8.1982, which reads thus:-

> 3. All Ris/Sub Majors and Risaldars/Subedars of the Regular Army including those of Defence Security Corps will only be considered for grant of honorary commissions on the active list in the last year of their colour service (in two chances). However, dorole decorees can be recommended in the last two years of their colour service (in 4 chances). JCOs who are invalided out of service or become permanent low medical category as a result of Battle casualty, attributable to or aggravated by military service, will also be considered for grant of commissions provided they are on active list on the respective dates of award. The conditions of eligibility are as under:
>
> ELIGIBILITY CONDITIONS:
>
> (a) Should have been declared fit for promotion to higher rank by their respective Departmental Promotion Selection Boards; or authority competent to order promotions where such Boards are not held or in case of junior JCOs who are not likely to come up before the Board, should atleast fulfil all the conditions of eligibility for promotion to higher rank laid down by this Mukhyalaya.
> (b) Should have been recommended by their respective OC. Units for the grant of honorary commissions/ranks in at least 3 of their last 5 ACRs including the last two.
> (c) Should have at least 3 'Above Average' and two high "Average ACRs in the last 5 years at the time of initiation of the recommendation form for the award.
> (d) Should not have more than four red ink entries during their entire

service out of which not more than two should be in the rank of JCO and the last two years of service should be free of any red ink entry.

Amongst the conditions, stipulated in the Army HO letter dated 20.08.1982 as eligibility criteria, is that a candidate should not have more than four red ink entries during his entire service, not more than two in the rank of JCO and none in the last two years of his service. While the petitioner would emphasize that the adverse remark in his ACR for the year 1987 was a red ink entry, respondents would submit that it did not. These instructions also prescribe, as eligibility criteria, that the ACRs for the preceding five years, at the time of initiation of the recommendation form, be take into consideration, out of which three should be 'above average' and two 'high average'. Petitioner would contend that the disciplinary proceedings initiated against him in April, 1987, and the adverse remarks in his ACR for the year 1987, (which was deleted subsequently in the year 1990 on a representation filed by him), were pending when the proceedings were initiated for conferment of honorary rank in the year 1988, and when such honorary ranks were awarded in the year 1989. According to the petitioner, since the disciplinary case instituted against him in April, 1987, was still pending his ACR for the year 1988 was not even prepared and that, as against the prescription of the preceding five years ACRs being considered, his ACRs only for the four preceding years was available, and that he could not have satisfied the prescribed eligibility criteria of being rated 'above average' in three ACRs and 'high average' in two ACRs in the last five years preceding initiation of the recommendation and

was neither eligible nor could he have been considered for being recommended for conferment of honorary rank. It is not necessary for this Court to examine whether or not the petitioner had a red ink entry against him, for the result of an adverse remark, in his ACRs for the year 1987, could only be that his merit rating could neither have been graded 'above average' nor 'high average' at least for the year 1987, and as such he could not have fulfilled the eligibility criteria prescribed for being considered for conferment of an honorary rank.

The yardstick, for allotment of marks for conferment of honorary rank, prescribes minus four marks for each red ink entry as a JCO, one mark for each completed year, two marks for each ACR where the candidate is rated 'above average', one mark for each ACR if he is graded as 'high average' and for candidates, who are graded as 'average', no marks are required to be given. Since the adverse remarks, in the petitioner's ACRs for the year 1987, were subsequently set aside in the year 1990, and the disciplinary proceedings instituted against him in April, 1987 was quashed by this Court, in its order in W.P. No. 4519 of 1991 dated 18.03.1997, it must necessarily be held that the petitioner was illegally denied being given a higher grading, which would have been given but for the adverse remarks which subsisted then and the disciplinary proceedings which were then pending.

As noted above this Court, while dismissing W.P.3777/98 by order dated 21.10.1989, had observed that according promotion or "**emoluments**" was subject to the result of the disciplinary proceedings. This Court, while allowing W.P.4519/91 by order

dated 18.3.1997 and in quashing the impugned proceedings of the 3rd respondent dated 16.8.1990, directed that the petitioner be granted promotion notionally with all "**consequential pecuniary and other benefits**" flowing from such promotion. While dismissing W.A.No.719 of 1997 by order dated 23.7.1997, the Division Bench also directed the respondents to extend "**all consequential benefits**" including difference in wages to the petitioner herein.

The words "**Benefit**", "**Consequence**", "**Consequential**", "**Consequential relief**" and "**relief**" are defined in P. Ramanatha Aiyer: The Law Lexicon the Encyclopaedic Legal & Commercial Dictionary Reprint Edition 2002, as under:-

'**Benefit**' is a word of wide import, it means no more than "advantage", the word '**benefit**' connotes benefits, express or otherwise, in terms of money but requiring computation, the word '**benefit**' is not restricted to material benefit, but is of wide significance comprehending whatever would be beneficial in any respect, material or otherwise. **Consequence**. What comes by causation; what follows.

Consequential. Following as a consequence.

Consequential relief. Consequential relief means a substantial and immediate remedy in accordance with the title which the Court has been asked to declare.

"**RELIEF**" means the remedy which a court of Justice may afford in relation to some actual or apprehended wrong or injury.

The words "**consequential benefit**" would thus mean all such advantages, material or otherwise, which follows as a result of the remedy which the Court has afforded in relation to an actual wrong or injury.

While it is true that the observations of this Court in W.P.3777/98, and that of the Division Bench in W.A.719/97, related to consideration of the petitioner's case for promotion to the post of Subedar Major, it cannot however be lost sight of that the words

"**consequential pecuniary and other benefits**" in W.P.No.4519 of 1991 dated 18.3.1997 and "**consequential benefits**" in W.A.719 of 1997 dated 23.7.1997 would mean all such advantages, material or otherwise, arising as a result of his promotion as Subedar-Major and would include the benefit of his being considered for conferment of the honorary rank of lieutenant/captain.

Since the departmental promotion board had recommended his case for promotion as a Subedar Major on three different occasions, the petitioner was entitled, in accordance with the directions of the Division bench of this Court, in W.A. No. 719 of 1997 dated 23.07.1997, to be promoted as a Subedar Major and the respondents, in fact, extended to the petitioner the benefit of notional promotion as Subedar Major with effect from 01.01.1988.

Regulation 163 of the Defence Service Regulations, which relates to retirement of JCOs, reads thus:

163- Retirement:- JCOs:-

(a) Retirement of JCOs of all Army of the Services, who opted for revised terms operative from 01 Dec 76, is compulsory on completion of the following service, tenure or age limits:-

(i) Nb Ris/Nb Sub : 26 (Subject to screening) years pensionable service or 50 years of age, whichever is earlier.

(ii) Ris/Sub : 28 years pensionable service or 50 years of age whichever is earlier.

(iii) Ris Maj/Sub Maj : 32 (subject to screening) years pensionable service, 4 years tenure or 52 years of age, whichever is earlier

Consequent upon his promotion as a Subedar Major, with effect from 01.01.1988 the petitioner was entitled, in accordance with Regulation 163, to continue in service atleast for a tenure of

four years till 01.01.1992. Para 3 of the instructions in Army Headquarters letter dated 20.08.1982 stipulates that all subedar majors and subedars in the active list of the regular army list would be considered for honourary commission only in the last year of their colour service (in two chances) and, in accordance therewith, the petitioner was entitled to have his case, for conferment of the honourary rank of lieutenant/captain, considered only in the last year of his service as a Subedar Major in 1991.

The contention of the respondents that, since the petitioner was already considered on two occasions, i.e., Republic Day and Independence Day of 1989, for conferment of honorary rank of lieutenant, he was not entitled to seek consideration again, does not merit acceptance.

Even if it were to be held that the petitioner was considered for conferment of honourary rank, both in the Republic day and Independence day of the year 1989, such consideration, not being in the last year of the petitioner's service as Subedar/Subedar Major i.e., in the year 1991, is contrary to the instructions in para 3 of the Army Headquarters letter dated 20.08.1982 and must, necessarily, be ignored. The respondents, having illegally denied consideration of the petitioner's case for conferment of the honorary rank of lieutenant/captain in his last year of service as Subedar Major in the year 1991, can neither be heard to contend that the petitioner was not entitled to the consequential benefit of being considered on the ground that he was considered earlier, when such consideration in the year 1989 was not in accordance with the rules/orders/instructions, nor can they be permitted to

take advantage of their own wrong in denying the petitioner the benefits to which he is entitled to.

Considering the case of the petitioner for conferment of honorary rank in the last year of his service in 1991 would also entitle him to be graded higher, and allotted more marks, as per the yardsticks prescribed for considering eligible candidates for conferment of these honorary ranks. As noted above, the adverse remarks in the petitioner's ACR for the year 1987 was pending when his case is said to have been considered by the respondents in the year 1989 and was, subsequently, set aside in the year 1990. Petitioner contends that his ACR for the year 1988 was not even prepared in view of the pendency of disciplinary proceedings and that, even if his case had been considered in the year 1989, only four out of the required five ACRs were available. Considering his case in his last year of service as Subedar Major in the year 1991, on the basis of his previous five years ACRs, including his ACR for the year 1987 dehors the adverse remarks, (which were subsequently set aside in the year 1990), and on his ACR for the year 1988 being prepared since the disciplinary proceedings pending against him earlier was subsequently quashed by this Court, would entitle the petitioner to be graded higher and be awarded more marks than what could have been awarded even if his case had been considered earlier in the year 1989.

Under Para 28, of the instructions in Army Headquarters Letter dated 20.8.1982, Risaldars/Subedars, once granted honorary commission as lieutenant, will not be promoted to the higher rank and retained in service under any circumstances and

will retire after completion of their normal tenure as Risaldars/Subedars. Just before their retirement JCOs, with an exemplary service record, are given honorary commission. Conferment of honorary commission, though not a promotion, is nonetheless a recognition of the exemplary service rendered by JCOs i.e., Subedars/Subedar Majors of the Army. Apart from the fact that a Subedar/Subedar Major, who has been conferred the honorary rank, would be entitled to the honour, status and respect which comes with such a rank, he would also be entitled for retiral benefits in the pay scales of the honorary rank awarded to him. Since the adverse remarks in his ACRs for the year 1987, were subsequently set aside in the year 1990 and as the disciplinary proceedings pending against him from April, 1987 was quashed by this Court, in its order in W.P. No. 4519 of 1991 dated 18.03.1997, the petitioner is entitled to have his performance graded and his merit assessed without reference to the adverse remarks in the ACR for the year 1987 or the disciplinary proceedings then pending against him, to have his case considered for conferment of the honorary rank of lieutenant and, in case he is found entitled for conferment of such a rank, also to be considered for conferment of the higher honorary rank of captain.

The petitioner was made to retire from service in October 1989, and did not render any service thereafter. No ACRs subsequent thereto would, therefore, be available. The petitioner's case, for being considered for conferment of the honourary ranks of lieutenant/captain, is, therefore, required to be examined on the basis of the five years ACRs preceding October, 1989, taking note that the adverse remarks for the year 1987 has been set aside in

1990 and the disciplinary proceedings instituted against him in April, 1987 has been quashed by this Court.

The background of the present case is replete with innumerable instances of the petitioner having been needlessly victimized. The order in W.A.719/97 dated 23.6.1997, dismissing the appeal preferred by the respondents against the order passed in W.P.4519/91 dated 18.3.1997, having attained finality, the incidents, detailed in the order in W.P.4519/91 dated 18.3.1997, which necessitates acceptance, do not show the respondents in favourable light. This court refrains from saying more. Suffice to hold that the exemplary service record of the petitioner, which has been noted in the order of this Court in W.P.4519/91 dated 18.3.1997, would justify his being given the honour and respect due to a Junior Commissioned Officer of the Army who has served the Nation with exemplary courage and valour.

Ends of justice would be met if, within a period of four months from the date of receipt of a copy of this Order, the respondents are directed to consider the case of the petitioner for conferment of the honourary rank of lieutenant and, if he is found entitled for conferment of the honourary rank of lieutenant, to also consider his case for conferment of the honourary rank of captain. In the facts and circumstances of the present case, I deem it appropriate to mould the relief sought for and hold that, even in case the petitioner is held entitled for conferment of the honourary rank of lieutenant/captain, he shall not be entitled for arrears of pay applicable to these ranks, that he shall be notionally fixed in the

appropriate pay scales with effect from the date of actual conferment of these honourary ranks, his pension and other retiral benefits calculated accordingly and that he shall only be entitled for arrears of the differential pension from 29.06.1998, the date on which he filed the present writ petition. The writ petition is, accordingly, allowed. However, in the circumstances, without costs.

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Date: .06.2007 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.
B/o
MRKR/ASP

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[1] AIR 1990 SC 1661
[2] 2006(2) SCC 652
[3] (2001)2 SCC 549
[4] 2006(2) ALD 1 (FB)
[5] (1999) 4 SCC 450
[6] (1967) 2 SCR 286)
[7] (1998) 8 SCC 685
[8] (1992) 2 SCC 598
[9] (1972) 3 SCC 432
[10] (2006) 4 SCC 322
[11] 1994(1) SCC 44
[12] 2002(2) SCC 475